

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
RICHARD L. TYLER }

For Appellant: Richard L. Tyler,
in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Richard L. Tyler against a proposed assessment of additional personal income tax and penalties in the total amount of \$3,498.59 for the year 1979.

Appeal of Richard L. Tyler

The issue for determination is whether appellant has established any error in respondent's assessment.

For the year in question, appellant Richard L. Tyler filed a state personal income tax return form on which he provided no information other than his name, address, and social security number. He filled in seven of the remaining blanks with the words "object: self-incrimination." When he failed to answer respondent's demand that he file a proper return, respondent issued a proposed assessment with penalties for failure to file a return, failure to file after notice and demand, **negligence**, and failure to pay estimated tax (Rev. & Tax. Code, §§ 18681, 18683, 18684, and 18685.05, respectively). The assessment was based upon information obtained from the Employment Development Department, which indicated that appellant had earned \$30,034 from Flying Tiger Lines, Inc., in 1979. Respondent's denial of appellant's protest led to this appeal.

Appellant asserts that the Fifth Amendment to the United States Constitution protects him from having to file an income tax return, because any financial information he reports on his return could be used to incriminate him in an undisclosed non-tax **crime** which he may or may not have committed. This argument is no more worthy of discussion now than it was when he asserted it against an assessment for 1978. (See Appeal of Richard L. Tyler, Cal. St. Bd. of Equal., Sept. 29, 1981.) We have consistently held that the Fifth Amendment **privilege** does not encompass the complete refusal to submit a valid return or to disclose any financial information from which income **tax** liability can be determined. (Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of Ruben El. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978; see United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973).)

Appellant also argues that in 1979 his income was less, and his expenses greater, than respondent estimated. We remind him that respondent's determinations of additional tax and penalties are presumed correct, and the taxpayer has the burden of disproving them by presenting demonstrable evidence. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Harold G. Jiadrich, Cal. St. Bd. of Equal., April 6, 1977.) Since he has made no attempt to do so, we must sustain respondent's actions.

Appeal of Richard L. Tyler

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Richard L. Tyler against a proposed assessment of additional personal income tax and penalties in the total amount of \$3,498.59 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins _____, Member

_____, Member

_____, Member